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No. 85-466 (2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

SOFT DRINK WORKERS, LOCAL 812, etc., *et al.*,
Petitioners,

v.

MONARCH LONG BEACH CORP.,
Respondent.

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Section 303 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 187 (1982), affords a civil action for damages caused by an unfair labor practice committed in violation of § 8(b)(4) of the National Labor Relations Act of 1935 as amended by the LMRA. The questions presented by this case are:

(1) Whether under the principles established in *DelCostello* v. *International Brotherhood of Teamsters,* 462 U.S. 151 (1983), the six-month period specified in § 10(b) of the NLRA, 29 U.S.C. § 160 (b), should govern in § 303 suits; and

(2) Whether the most analogous state statute of limitations to borrow is that contained in New York Business Law § 340, subsection 5.

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SOFT DRINK WORKERS, LOCAL 812, etc., *et al.*,
Petitioners,

v.

MONARCH LONG BEACH CORP.,
Respondent.

BRIEF IN OPPOSITION

Monarch Long Beach Corp., respondent, plaintiff-appellant in the courts below, hereby opposes the petitioners', Soft Drink Workers, Local 812, etc., *et al.*, petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review that court's decision and judgment in *Monarch Long Beach Corp.* v. *Soft Drink Workers,* 762 F.2d 228 (CA. 2 No. 84-7866, 1985), insofar as that decision and judgment reinstates count I of Monarch's complaint in this action.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 762 F.2d 228 and is reproduced in the Appendix to the Petitioners' Petition for a Writ of Certiorari ("Pet. App.") at

pp. 1a-8a. The opinion of the United States District Court for the Eastern District of New York is reported at 593 F.Supp. 384 and is reproduced at Pet. App. 9a-12a.

JURISDICTION

The decision of the court of appeals was rendered on May 20, 1985. On July 31, 1985, Justice Marshall signed an order extending the time for filing the petition to and including September 17, 1985. This Court has jurisdiction under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 187(b).

The respondent received the petitioners' petition for a writ of certiorari on September 20, 1985 and files this brief in opposition pursuant to Rule 22.1 of the Rules of the Supreme Court of the United States.

STATUTES INVOLVED

This case involves §§ 8(b)(4) and 10(b) of the National Labor Relations Act of 1935 ("NLRA"), 49 Stat. 449, as amended by the Labor-Management Relations Act of 1947, 61 Stat. 136 ("LMRA"), and the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 ("LMRDA"), and also involves § 303 of the LMRA, as amended by the LMRDA. These provisions are reproduced in pertinent part at Pet. App. 15a-18a. New York General Business Law § 340 is reproduced in the Respondent's Appendix ("App.") at pp. 1a-3a.

STATEMENT OF THE CASE

This case arises out of the activity of Soft Drink Workers, Local 812 ("Local 812") in picketing and

handbilling Monarch Long Beach Corp. ("Monarch") from March 27, 1978 until August 25, 1978. Pet. App. 2a-3a.

The respondent is a New York Corporation engaged in the wholesale and retail sale of soft drink beverages, beer and ice. Local 812 is a labor organization which represents, in the main, workers in the soft drink manufacturing industry in the New York metropolitan area and other counties in the State of New York.

Due to the very high cost of doing business in the New York metropolitan area, the soda manufacturers within the petitioners' geographical area of jurisdiction began to suffer a serious loss of business in 1977 and 1978, and as a result, a large number of Local 812 members lost their jobs. Pet. App. 2a. In response, Local 812 surveyed retail outlets within its geographical jurisdiction and discovered that a substantial amount of soda sold at retail was shipped from outside the area. Pet. App. 2a. In fact, the respondent purchased most of the soda it sold from out-of-state manufacturers. Pet. App. 2a.

On March 27, 1978, without notice or warning, Local 812 began picketing the respondent's retail store to force the respondent to cease purchasing beverages manufactured outside Local 812's geographical jurisdiction and to urge Monarch's customers to buy locally produced soft drinks. Such picketing continued until August 25, 1978.

On April 7, 1982, Monarch filed unfair labor practice charges against Local 812 with the National Labor Relations Board ("NLRB" or "the Board"). Pet. App. 2a. The NLRB found that Local 812 had violated § 8(b)(4)(ii)(B) of the National Labor Relations Act,

as amended, 29 U.S.C. § 158(b)(4)(ii)(B), by its activity urging Monarch's customers to buy locally produced soft drinks, *Soft Drink Workers Union Local 812,* 243 NLRB 801 (1979), and the NLRB's decision was enforced by the United States Court of Appeals for the District of Columbia Circuit. *Soft Drink Workers Union Local 812* v. *NLRB,* 657 F.2d 1252 (1980).

On May 11, 1978, while the unfair labor practice case was pending before the NLRB, The Board sought a preliminary injunction against Local 812 pursuant to 10(l) of the NLRA, 29 U.S.C. § 160(l). The NLRB's petition for a § 10(l) injunction was denied by the United States District Court for the Eastern District of New York on May 30, 1978. Pet. App. 3a.

On June 5, 1978, Monarch commenced an action against Local 812 in the Supreme Court of the State of New York, County of Nassau, seeking injunctive relief and monetary damages pursuant to the clearly defined public policy of the State of New York regarding embargoes. The suit was removed to federal court and then remanded to state court. That litigation is still pending in the state court. Pet. App. 3a.

On August 25, 1981, Monarch filed the complaint in this case. Pet. App. 3a. Count I of the complaint alleged that by engaging in this picketing, Local 812 had violated LMRA § 303, 29 U.S.C. § 187. Pet. App. 1a. Count II of the complaint alleged that the picketing violated New York's common law regarding embargoes. Pet. App. 2a.

The district court held that, under this Court's decision in *DelCostello* v. *Teamsters,* 462 U.S. 151 (1983), the appropriate statute of limitations to be applied in

an action filed under LMRA § 303, is that contained in NLRA § 10(b), 29 U.S.C. § 160(b). Pet. App. 11a. Since § 10(b) provides a six month limitations period, and Monarch's action was filed three years after Local 812 had ceased picketing, the district court dismissed count I or the complaint, which alleged a violation or § 303, as time-barred. Pet. App. 11a. The district court also dismissed the other count of the complaint, ruling that Monarch's state law claim is preempted by federal law. Pet. App. 11a.

Monarch appealed the district court's dismissal of its complaint, and the court of appeals reinstated count I of the complaint. The court of appeals ruled that the limitations period to be applied in an action under LMRA § 303 should be borrowed from the most analogous state law and that "[t]he most suitable state law analogue [to a suit under LMRA § 303] . . . is New York's cause of action for damages to one's business caused by actions in restraint of trade, N.Y. Gen. Bus. Law § 340 (McKinney 1968 & Supp. 1984), which has a four year statute of limitations." Pet. App. 7a. Since Monarch filed its complaint three years after the picketing ended, the court of appeals held that count I, alleging a § 303 violation, is timely under the four-year limitations period borrowed from New York law. The court of appeals agreed with the district court that the pendent state law claim advanced by Monarch in count II of its complaint is preempted by federal law. Pet. App. 7a. The court of appeals therefore reversed the district court's dismissal of count I, affirmed its dismissal of count II, and remanded the case for further proceedings. Pet. App. 8a. The petitioners have filed a petition for a writ of certiorari to review the United States Court of Appeals for the Second Cir-

cuit's decision and judgment as to count I. The respondent has filed a cross-petition for a writ of certiorari to review the United States Court of Appeals for the Second Circuit's decision and judgment as to count II.

REASONS FOR DENYING THE WRIT

Section 10(b) of the NLRA requires that unfair labor practice charges be filed with the NLRB within six months of the alleged wrongdoing. In *DelCostello,* this Court held that the § 10(b) statute of limitations governs hybrid LMRA § 301/duty of fair representation suits in district courts.

Section 303 of the LMRA confers upon any person "injured in his business or property" as a result of secondary boycott activities—conduct deemed unlawful for the limited purpose of the provision—a right of action to "recover the damages by him sustained and the cost of the suit." Section 303 contains no limitations period.

Section 303 suits do not implicate the policy considerations that influenced the *DelCostello* court in applying a six-month statute of limitations to a hybrid LMRA § 301/duty of representation suit. This Court's application of the § 10(b) limitations period was rooted in the facilitation and protection of "those consensuel processes that federal law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it." *Id.* at 162-63 [quoting *UAW* v. *Hoosier Cardinal Corp.,* 338 U.S. 696, 702 (1966)]. A section 303 cause of action, specifically arising from a secondary boycott, involves parties who are otherwise completely unrelated. The

dispute upon which liability in such actions is predicated is not a collective bargaining dspute, nor does it arise within the context of a labor-management relationship. Labor peace will not be disrupted if § 303 suits are not rapidly resolved. Thus, policy considerations do not implicate the need for a § 10(b) six-month statute of limitations in the case of a secondary boycott and a § 303 cause of action.

Moreover, there exists an appropriate New York State law from which to borrow a limitations period for a § 303 cause of action, which does not frustrate the underlying policies of § 303.

The nature of a § 303 cause of action is an action to recover for injuries to one's business or to one's property caused by a specific type of tortious conduct. N.Y. General Business Law § 340 (McKinney 1968 & Supp. 1984) provides for a cause of action for damages to one's business caused by actions in restraint of trade and contains a four year statute of limitations.

Therefore, the court of appeals correctly applied the N.Y. Gen. Bus. Law § 340 four year statute of limitations to the respondent's § 303 cause of action in accordance with congressional policy and this Court's reasoning in *DelCostello*. For this reason, the respondent respectfully opposes the petitioners' petition for a writ of certiorari.

I. The Court Of Appeals' Decision Is Consistent With This Court's *DelCostello* Decision.

A. When Congress creates a federal cause of action but does not expressly provide an applicable statute of limitations, it is assumed that Congress intended the courts to adopt the limitations period of an analogous

cause of action. Ordinarily, courts have drawn a rule from state law, *Johnson* v. *Railway Express Agency,* 421 U.S. 454, 462-65 (1975); *UAW* v. *Hoosier Cardinal Corp., supra,* 703-04. But where the application of a state statute of limitations would "frustrate or interfere with the implementation of national policies" or "be consistent with the underlying policies of the federal statute," courts should borrow a timeliness rule from federal law. *Occidental Life Insurance Co.* v. EEOC, 432 U.S. 355, 367 (1977); *Wilson* v. *Garcia,* —— U.S. ——, 105 S.Ct. 1938 (1985).

In *DelCostello,* this Court applied the six-month limitations period from § 10(b) of the NLRA, 29 U.S.C. § 160 to a "hybrid" § 301/fair representation suit brought by an employee against his employer and his union. The suit alleged that the employer had breached a provision of the collective bargaining agreement and that the union had breached its duty of fair representation by mishandling the ensuing grievance and arbitration proceedings. *Supra,* at 154.

This Court first noted that it was improper to apply mechanically a state statute of limitations to a federal statutory cause of action when such an application would frustrate federal policies. *Id.* at 161. The Court then emphasized the important federal interests in promoting the formation of collective bargaining agreements and the speedy, private settlement of disputes under them. *Id.* at 162-163. The Court determined that a hybrid § 301/fair representation claim amounted to a "direct challenge" to the private settlement of disputes under a collective bargaining agreement and that such a claim had no close analogy in ordinary state law. *Id.* at 165. Therefore, the Court concluded that

the NLRA unfair labor practices statute, 29 U.S.C. § 160, was the closest analogy to the § 301/fair representation claim—because of the similarity in the rights asserted in fair representation claims and unfair labor practice charges (both involving allegations of unfair, arbitrary, or discriminatory treatment of workers by unions), and the similarity of considerations relevant to the choice of limitations period in the two contexts *Id.* at 170-171. *See United Parcel Service, Inc.* v. *Mitchell,* 451 U.S. 56 (1981). The *DelCostello* Court stated:

> "In § 10(b) of the NLRA, Congress established a limitations period attuned to what it viewed as the proper balance between the national interests in stable bargaining relationships and finality of private settlements, and an employees' interest in setting aside what he views as an unjust settlement under the collective bargaining system. . . . Accordingly, [t]he need for uniformity among procedures followed for similar claims, as well as the clear congressional indication of the proper balance between the interests at stake, counsels the adoption of § 10(b) of the NLRA as the appropriate limitations period for lawsuits such as this.

Id. at 171.

The Court determined that the closest state law analogue to the cause of action against the employer in the "hybrid" context was that for the vacation of an arbitration decision. *Id.* at 165-166. *See United Parcel Service* v. *Mitchell, supra.* It found the most analogous state law limitations period for that portion of the action alleging a breach of the union's duty of fair representation to be that for filing a malpractice action. *DelCostello, supra,* at 167.

The Court reasoned that most state statutes of limitations vacating arbitration awards were too short in that they failed to provide the "hybrid" plaintiff with a satisfactory opportunity to vindicate his rights under § 301 and the fair representation doctrine. *Id.* at 166. The Court further reasoned that most state statutes of limitations for bringing malpractice actions were too long and that application of such limitations period would frustrate the federal policy of quick resolution of disputes between parties continually bound by collective agreements. *Id.* at 168.

Only after this analysis did the Court look to federal law for a closer analogy consonant with the federal policy in establishing a cause of action. It found that the breach of the duty of fair representation bears a "family resemblance" to an unfair labor practice. *Id.* at 170. Thus, the court concluded that, since Congress designed § 10(b) to accommodate the various interests at stake in the resolution of unfair labor practices involving collective bargaining agreements, the six-month limitations period under § 10(b) would best serve the purposes of "hybrid" § 301 actions.

B. The petitioner contends that the court of appeals construed *DelCostello* too narrowly and that court should have applied the § 10(b) six-month statute of limitations to a § 303 action. However, the petitioners have failed to recognize the true national labor policy reason for the borrowing of the § 10(b) statute of limitations, namely, that federal policy is concerned with fostering the quick resolution of disputes between parties to collective bargaining agreements.

> "Congress created § 10(b) of the NLRA to protect continuing collective bargaining systems from delayed attack. The six-month bar of § 10(b) is

> to strengthen and defend the stability of bargaining relationships." *United Parcel Service* v. *Mitchell, supra,* at 68 (Stewart, J., concurring).

Where the parties are strangers, but for the unlawful conduct, as in the instant case, the national policy considerations considered crucial in *DelCostello* are not involved.

In addition, this Court's own language in *DelCostello* is contrary to the petitioners' contention that the court of appeals read that case too narrowly:

> "We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations period for federal causes of action, in labor law or elsewhere. We do not mean to suggest that federal courts should eschew use of state limitations period anytime state law fails to provide a perfect analogy.

Id. at 170.

C. The petitioner claims that the violation the respondent alleges is an unfair labor practice and that failure to apply the § 10(b) six-month statute of limitations to all unfair labor practices directly and unnecessarily frustrates congressional policy (Petition for cert. p. 9). The petitioner reasons that § 303(b), under which this suit is brought, provides a remedy for violation of § 303(a), which in turn expressly incorporates the unfair labor practice set out in § 8(b)(4). Thus, the petitioner suggests, that in a § 8(b)(4)—§ 303 context, the § 10(b) statute of limitations must be adopted. (Petition for cert. pp. 7-9).

However, a close analysis of this Court's reasoning in *DelCostello* clearly shows that the § 10(b) limitations period is not applicable to an action, such as a § 303 action, simply because such an action is based on a

finding that a labor organization committed an unfair labor practice. *See Park Electric Co.* v. *IBEW, Local 701,* 593 F. Supp. 1060 (N.D. Ill., 1984). Rather, in *DelCostello,* § 10(b) was applied because of the underlying nature of the hybrid § 301 action, the relationships of the parties involved in a hybrid § 301 action, and the frustration of federal policy that would be caused by the "borrowing" of the most analogous state statutes of limitation.

Section 303 of the LMRA is one of the two parts of the "dual remedial scheme" directed against those who commit secondary boycotts. A secondary boycott is defined in 29 U.S.C. § 158(b)(4)(ii)(B) which states in pertinent part that:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * * * * *
>
> (4) . . . . (ii) to threaten, coerce or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> * * * * * * * *
>
> (b) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

Thus, by definition, the secondary employer has no collective bargaining relationship with the labor organization alleged to have committed the unlawful activities. As such, the concerns which led this Court to adopt § 10(b) in § 301 actions are not present in § 303 actions.

The "dual remedial scheme" permits a neutral employer to invoke both an administrative remedy in equity and a legal remedy for damages suffered by reason of certain unlawful activities.

The administrative remedy is invoked with the filing of a charge alleging a § 8(b)(4) violation with the National Labor Relations Board. Generally, the administrative mechanism is the only route to obtain injunctive relief. If the charge is found to have merit after an initial investigation, the NLRB must immediately petition the appropriate federal court for a preliminary injunction pending final resolution of the complaint by the Board. See 29 U.S.C. § 160(l). If, after a full evidentiary hearing, the NLRB finds that a violation of § 8(b)(4) has occurred, it can order the offending labor organization to permanently cease and desist from committing the proscribed acts.

In establishing this administrative remedy, Congress intended to divest the federal courts of jurisdiction to hear private petitions for injunctive relief in secondary boycott situations. It vested the NLRB in its role as primary interpreter of the NLRA, to determine whether the charge has merit, and if so, empowered it with the ability to petition a federal court for injunctive relief pending adjudication of the complaint.

Section 303, on the other hand, provides the secondary employer with a private right of action at law to

recoup the damages caused by the activities of a labor organization defined as unlawful pursuant to § 8(b)(4). A plaintiff may not obtain injunctive relief pursuant to § 303. *Galveston* v. *Master, Mates and Pilots*, 338 F. Supp. 907 (S.D. Texas, 1972). A plaintiff may pursue either remedy or both. There is no requirement that a § 8(b)(4) charge be filed prior to the commencement of a § 303 action.

This Court has recognized the distinctions between the two branches of the "dual remedial scheme." "The fact that the two sections have an identity of language and yet specify two different remedies is strong confirmation of our conclusion that the remedies provided were to be considered independently of each other." *International Longshoremen & Warehouseman's Union* v. *Juneau Spruce Corp.*, 342 U.S. 237, 244 (1952).

The nature of this express private right of action for damages is no different from any other lawsuit to collect damages for unlawful activities. It does not implicate the federal concerns expressed in *DelCostello*. The fact that § 303 permits state courts to hear actions arising thereunder without the necessity of the plaintiff pursuing the federal administrative remedy provides additional weight to the argument that Congress intended the courts to "borrow" state timeliness rules in § 303 actions. See U.S.C. § 187(b).

D. There is no evidence to support the petitioners' conclusion that "in a substantial proportion of suits brought under § 303, the parties are in a collective bargaining relationship." (Petition for cert. p. 11). This is underscored by the fact that no cities were submitted to support that erroneous assertion. Even if this were the case, the respondent neither has a collective bargaining nor a labor-management relationship with the

petitioner. Therefore, the policy considerations that influenced the *DelCostello* court are not invoked in the instant petitioner/respondent relationship. The specific circumstances of a hybrid § 301/duty of fair representation suit necessarily involve an immediate and direct impact on a labor-management/collective bargaining relationship which demarcates the limits of *DelCostello's* reach. *See O'Hare* v. *General Marine Transport Corp.*, 740 F.2d 160, 162, 167-168 (2d Cir. 1984); *see also Adams* v. *Gould, Inc.*, 739 F.2d 858, 866-67 (3d Cir. 1984).

In addition, the cases to which the petitioners cite with regard to the application of the § 10(b) statute of limitation to suits under § 102 of the LMRDA, 29 U.S.C. § 412 do not broaden such demarcation. *See Davis* v. *UAW*, 765 F.2d 1510 (11th Cir. 1985); *Vallone* v. *Local Union No. 705, Teamsters*, 755 F.2d 520 (7th Cir. 1985); *Local 1397 Steelworkers* v. *United Steelworkers of America*, 748 F.2d 380 (3d Cir. 1984); *Linder* v. *Berge*, 739 F.2d 686 (1st Cir. 1984). Each of these cases involved a union member and an internal union dispute. By applying the § 10(b) statute of limitations, the circuit courts actually supported a narrow construction of *DelCostello*. As the Eleventh Circuit Court of Appeals stated in *Local 1397 Steelworkers* v. *United Steelworkers of America:*

> "By the same token, however, rapid resolution of internal union disputes is necessary to maintain the federal goal of stable bargaining relationships, for dissention within a union naturally affects the union's activities and effectiveness in the collective bargaining arena."

Supra, at 184.

Therefore, the same policy concerns of this Court in *DelCostello* are present in suits brought under § 102 of the LMRDA and for this reason, the § 10(b) limitation was properly applied. But, since these concerns do not exist in § 303, secondary boycott actions, an analogous state limitations period should be applied, since such application would not frustrate federal policy.

II. The Most Analogous State Statute Of Limitation To Borrow Is That Contained In N.Y. Gen. Bus. Law § 340 Subsection 5.

Section 303 allows a plaintiff to sue for damages for "injury to business or property." Insofar as the statute specifies and distinguishes two types of possible injury (to business *or* property), it is clear that Congress contemplated a distinction between the two. "It seems logical to infer that injury to business *or* property . . . means they are separate wrongs." *United Mine Workers* v. *Meadow Creek Coal Co.,* 263 F.2d 52 (6th Cir. 1959) at 63. In *Meadow Creek Coal,* the Sixth Circuit refused to apply the Tennessee statute of limitations for an "injury to property" in a § 303 action. It relied on this Court's rationale in *Chattanooga Foundry & Pipe Works,* 203 U.S. 390 (1906), an anti-trust damages action decided prior to the enactment of 15 U.S.C. 15b, in which the Court rejected Tennessee's "injury to property" limitations period as the complaint for damages prayed for recompense for injury to the plaintiff's "business."

In New York, the right to carry on a lawful business free from unlawful interference is protected by virtue of New York General Business Law § 340. *Andersson* v. *Franklin Society Federal Savings and Loan Association,* 39 Misc. 2d 7, 239 N.Y.S. 2d 765 (1963). General Business Law § 340, in pertinent part, states:

> "Every contract, agreement, arrangement or combination whereby . . . For the purpose of . . . unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce . . . is hereby declared to be against public policy, illegal and void."

General Business Law § 340, subd. 5 reads, in pertinent part:

> "An action to recover damages caused by a violation of this section must be commenced within four years after the cause of action has accrued."

It is beyond dispute that Local 812's activities violated the broad strictures of General Business Law § 340. Both the NLRB and the United States Court of Appeals for the District of Columbia found that Local 812 intended to interfere with Monarch's business herein and particularly attempted to coerce Monarch into ceasing the purchase and sale of soft drinks from non-local manufacturers whereas Monarch's practice was to purchase non-local beverages because of their lower price. See *Soft Drink Workers Union, Local 812,* 243 NLRB at 806; *Soft Drink Workers Union, Local 812* v. *NLRB, supra,* 657 F.2d at 1261.

Thus, the court of appeals properly "borrowed" the four year statute of limitations contained in General Business Law § 340 which is the most analogous state statute of limitations period to apply to this action. Thus, even assuming that the four years began to run on the first day of picketing March 27, 1978, this action, filed on August 25, 1981, was timely.

CONCLUSION

For the reasons stated above, the respondent opposes the petitioners' petition for a writ of certiorari and respectfully urges the court to deny such petition.

Respectfully submitted,

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APPENDIX

APPENDIX

New York General Business Law § 340 provides as follows:

> 1. Every contract, agreement, arrangement or combination whereby
>
> A monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby
>
> Competition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained or whereby
>
> For the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state any business, trade or commerce or the furnishing of any service is or may be restrained, is hereby declared to be against public policy, illegal and void.
>
> 2. Subject to the exceptions hereinafter provided in this section, the provisions of this article shall apply to licensed insurers, licensed insurance agents, licensed insurance brokers, licensed independent adjusters and other persons and organizations subject to the provisions of the insurance law, to the extent not regulated by provisions of article eight of the insurance law; and further provided, that nothing in this section shall apply to the marine insurances, including marine protection

and indemnity insurance and marine reinsurance, exempted from the operation of article eight of the insurance law.

3. The provisions of this article shall not apply to cooperative associations, corporate or otherwise, of farmers, gardeners, or dairymen, including live stock farmers and fruit growers, nor to contracts, agreements or arangements made by such associations, nor to bona fide labor unions.

4. The labor of human beings shall not be deemed or held to be a commodity or article of commerce as such terms are used in this section and nothing herein contained shall be deemed to prohibit or restrict the right of workingmen to combine in unions, organizations and associations, not organized for the purpose of profit.

5. An action to recover damages caused by a violation of this section must be commenced within four years after the cause of action has accrued. The state, or any political subdivision or public authority of the state, or any person who shall sustain damages by reason of any violation of this section, shall recover three-fold the actual damages sustained thereby, as well as costs not exceeding ten thousand dollars, and reasonable attorneys' fees. At or before the commencement of any civil action by a party other than the attorney-general for a violation of this section, notice thereof shall be served upon the attorney-general. Where the aggrieved party is a political subdivision or public authority of the state, notice of intention to commence an action under this section must be served

upon the attorney-general at least ten days prior to the commencement of such action. This section shall not apply to any action commenced prior to the effective date of this act.

(As amended L.1975, c. 333, §1.)